

**REVISION # 4 – JANUARY 20, 2005**

**IDAHO INDUSTRIAL COMMISSION**  
**POLICY**

**PUBLIC RECORDS REQUEST GUIDELINES**

# PUBLIC RECORDS REQUEST GUIDELINES

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## **I. General Policy.**

A. The right to examine and copy all non-exempt public records. The Idaho Public Records Law (Idaho Code §§ 9-337 through 9-350) grants every person the right to examine and take a copy of any of the public records of this state agency. All records of the Industrial Commission containing information relating to the conduct or administration of the business of this agency are “public records.” There is a presumption that all public records are open at all reasonable times for inspection except as otherwise expressly provided by statute. However, there are some categories of public records that are specifically exempt from this general right to inspect and copy agency public records. Those exemptions that are applicable to public records that are maintained by the Industrial Commission are discussed in section II, below.

B. Exempt records must be separated. If the requested public record contains information that is exempt from disclosure as well as information that is not exempt, the agency must separate the exempt information from the information that is not exempt and permit inspection and copying of the nonexempt portion of that public record. An agency cannot refuse to disclose nonexempt material in a record solely because it is contained in the same public record as exempt material.

C. A person’s right to examine his own records. This law also grants every person the right to inspect, copy and request the amendment of any record that pertains to him or her that is maintained by an agency. Under this provision, a person may also authorize release of his own records to a third party acting as his agent. However, this right of access to a person’s own records does not apply to records of an ongoing investigation by the agency, to records prepared in reasonable anticipation of litigation, to records relating to adoption or to records exempted from disclosure by other laws.

D. Release of records under other authority. The Public Records Law is only one way that records may be requested and obtained from the Industrial Commission. There are laws that authorize the release of information to other governmental agencies for official purposes that would otherwise be exempt from disclosure. Idaho Code § 56-231, for example, authorizes the Idaho Department of Health and Welfare and county prosecuting attorneys to obtain exempt information to assist them in enforcing child support laws. Requests from other governmental entities will be forwarded to the Director and may be reviewed by the Deputy Attorney General to determine if there are other laws which will authorize the release of otherwise exempt information to that other government agency.

E. Release of records under a subpoena. The Public Records Law also acknowledges that the legal processes available to parties in civil or administrative cases may be used to obtain records that are otherwise exempt from disclosure under the Public Records Law [Idaho Code § 9-343(3)]. Typically, the party to a lawsuit will send the Commission or one of its employees a *Subpoena Duces Tecum* under the provisions of Rule 30(b)(6) of the Idaho Rules of Civil Procedure. That rule requires the Commission to designate a representative and produce all requested records to the requesting party at the designated time and place. Again, this type of request will be referred to the Director for possible Deputy Attorney General review before release is made to ensure compliance with the applicable law and rules.

## II. Exemptions.

A. General Policy. Idaho Code §§ 9-340A through 9-340H set out all exemptions from the general requirement to release public records. The following list sets out only those few categories of exempt public records that are most likely to be requested from the Industrial Commission by the public. A request for agency records that are not covered by one of the exemptions listed below may, nevertheless, still be exempted by one of the many other provisions of the law not identified in this policy. When there is any doubt about whether or not an agency record may be released, the Deputy Attorney General assigned to the Commission should be consulted. In addition, the Deputy Attorney General should review every request for Commission public records where a denial or partial denial of that request is anticipated, in order to comply with Idaho Code § 9-339(4).

B. Typical Exemptions – Commission Records. The following categories of public records maintained by the Industrial Commission are, with the exceptions noted below, exempt from disclosure to the public:

1. **Under I.C. § 9-340B(10) – All workers’ compensation records,**  
**except** when requested by:

- a. A **party** in a worker’s compensation claim, or
- b. An **employer** or prospective employer who certifies that the information is being requested with respect to a current employee or a worker to whom the employer has extended an offer of employment and that the information will be used in accordance with the Americans with Disabilities Act (42 USC 12112), or
- c. An **employer** or prospective employer who presents a written authorization from the person to whom the records pertain, or
- d. **Anyone** who has obtained an **order from a court** of competent jurisdiction requiring release after the court has determined that the public

interest in allowing inspection and copying of these records outweighs the public or private interest in maintaining the confidentiality of such records.

2. **Under I.C. § 9-340B(15) – Records of the Commission relating to compensation for crime victims under the Crime Victims Compensation Act, except**, as provided in I.C. § 72-1007, to:

- a. A claimant or his attorney or authorized representative who may examine files related to his application for crime victims compensation, or
- b. A person who has obtained an order from a court after showing that the specific information or records are not obtainable through diligent effort from any independent source and the court has reviewed those records *in camera* to determine that the public interest in disclosing the records outweighs the public or private interest in maintaining the confidentiality of those records, or
- c. Public employees and officials in the performance of their official duties, or
- d. To health care providers who are:
  - (1) Treating or examining victims claiming benefits under the Crime Victims Compensation Act, or
  - (2) Giving medical advice to the Commission regarding any claim.

3. **Under I.C. § 9-340C(1) – All personnel records of current or former employees or applicants for public employment, except** for information regarding:

- a. Their public service or employment history, or
- b. Their classification, pay grade and step, or
- c. Their longevity, or
- d. Their gross salary and salary history, or
- e. Their status, or
- f. Their workplace and employing agency.

No other information about employees or applicants can be disclosed without the prior written consent of the employee or applicant.

4. **Under I.C. § 9-340C(7) – All records containing employment security information and unemployment insurance benefit information, except** when all interested parties agree to waive the exemption.

The Commission may disclose statistical information that does not identify a specific person or persons, notwithstanding the fact that the information may have been obtained from agency public records that are otherwise exempt from release under one of these provisions of the law.

### III. Processing requests.

#### A. General Policy.

1. Verbal or written requests. Requests to inspect or copy records of the Industrial Commission may be verbal or, at the discretion of the record custodian, they may be required to be in writing. **The requestor shall, in any case, be required to provide their name, address and telephone number.** Requests shall be submitted to the appropriate custodian of the record requested at the address identified in paragraph B, below. Reasonable accommodations will be made to assist members of the public who make in-person requests to reduce their requests to writing if required, including providing them paper and pen or a request form prepared for that purpose by the record custodian. (See Appendices A through D, attached, for standard forms covering the most common categories of requests for workers' compensation records. Appendix E, attached, is a general form which may be used to request other types of records from the Commission. While use of these forms is encouraged, a written request that contains all of the relevant information on a Commission form will be accepted. Requests not covered by these forms may be accepted in any written form prepared by the requestor that provides sufficient information to permit the Commission to respond to the request.)

2. Purpose of request irrelevant. The only information that may be solicited from the requestor about the purpose of the request is to determine that the information will not be used for the purpose of a mailing or telephone list prohibited by Idaho Code § 9-348.

3. Requestor's documents. Agency employees will not review, examine or scrutinize any documents in the possession of the requestor.

4. Accommodations for requestor. Requestors shall be provided with all reasonable comfort and facilities necessary for the full exercise of their right to inspect and copy agency records.

5. Protection of public record during examination. An agency employee will exercise appropriate and necessary vigilance over the records while they are being inspected or copied to ensure that the public records are not altered.

6. Availability of records. Agency records will only be available for inspection or copying during the agency's regular office hours.

7. Compliance. Employees who follow the procedures set out in this policy will be protected from personal liability under the law. Any questions regarding the interpretation of this guideline or the law should be directed to the Deputy Attorney General for the Commission. All requests that may be completely or partially denied must be forwarded to the Director for final decision, after legal review by the Deputy Attorney General.

B. Commission Record Custodians. The individuals identified below are designated the agency record custodian for the group of agency records described. All requests for agency records shall be directed to the appropriate custodian. Requests for agency records not identified or that request access to records under the control of more than one custodian shall be forwarded to the Director for coordinating, processing and responding to the request. Likewise, all controversial requests, including subpoenas for agency records from a party in a lawsuit, requests for information from other government offices, including requests from the governor's office, Idaho legislators or the U.S. Congress, or from the news media, will be forwarded to the Director for review and coordination with the Deputy Attorney General or other staff offices as needed.

<u>Record Category:</u>	<u>Custodian:</u>	<u>Location:</u>
1. Workers Compensation Claim Records	Bureau Chief, Benefits Administration	317 Main Street Boise, ID 83720-0041
2. Adjudicated Workers Compensation Case Records	Office Supervisor, Adjudication Division	317 Main Street Boise, ID 83720-0041
3. Unemployment Appeal Records	Office Supervisor, Adjudication Division	317 Main Street Boise, ID 83720-0041
4. Personnel & Payroll Records	Supervisor, Personnel and Training	317 Main Street Boise, ID 83720-0041
5. Rehabilitation Records	Regional Manager, Rehabilitation Division	317 Main Street Boise, ID 83720-0041
6. Compliance Records	Employer Compliance Manager	317 Main Street Boise, ID 83720-0041
7. Financial Records	Financial Officer	317 Main Street Boise, ID 83720-0041
8. Crime Victims Compensation Records	Bureau Chief, Crime Victims Compensation	317 Main Street Boise, ID 83720-0041



C. Request Forms: The Commission has developed standard forms for requesting copies of those workers' compensation records normally sought under the Public Records Law (see Appendices A through E, attached). Those forms and their use are explained below. A requestor will properly complete the appropriate form if one has been developed to cover his request or, at his option, provide the record custodian with the information and certification called for by these forms in any written form acceptable to the record custodian. Requests for agency records that do not fall into the categories covered by these forms will be handled by the record custodian on a case-by-case basis and at the discretion of the record custodian may be required to be in writing. Requests may be in any form that properly describes the record sought and identifies the requestor. Record custodians who desire to develop a request form to cover repeated requests for records in their area will have the form approved by the Director as an appendix to this policy prior to implementing its use.

1. Request for a claims history or workers' compensation records from a party or the Industrial Special Indemnity Fund. Parties to an open or closed claim or the Industrial Special Indemnity Fund may request a copy of a claims history or any other workers' compensation records by properly completing ***I.C. Records Form RMR-1 (Request for Workers' Compensation Records)***, attached at Appendix A.

2. Request for a claims history from employers subject to the Americans with Disabilities Act (ADA). An employer that is subject to the ADA and who has made an offer of employment may request a claims history on the prospective employee by properly completing ***I.C. Records Form RMR-2 (Employer Certificate and Request for Claims History)***, attached at Appendix B.

3. Request for a claims history to be provided to an employer **not** subject to the ADA. An employer or prospective employer not subject to the ADA may obtain a claims history on the prospective employee by obtaining the authorization of the employee on a properly completed ***I.C. Records Form RMR-3 (Authorization to Release Claims History)***, attached at Appendix C.

4. Request for personal workers' compensation records from the individual worker. A worker may request a copy of his or her own workers' compensation records by properly completing ***I.C. Records Form RMR-4 (Claimant's Request for Personal Workers' Compensation Records)***, attached at Appendix D.

5. Request for documents other than workers' compensation records. A member of the public may request a copy of a Commission document (other than workers' compensation records) by properly completing ***I.C. Records Form***

***RMR-5 (Request for Records – Other than Workers' Compensation Records)***, attached at Appendix E.

D. Processing Time Limits. All requests to examine or copy a public record must be granted or denied within three (3) working days of the agency's receipt of the request. If it is determined that a longer time will be needed to locate or retrieve the requested record, the requestor will be so notified in writing. In that event, the record will be provided to the requestor no later than ten (10) working days after the request was received. If the agency fails to respond to a request within ten (10) working days, it shall be deemed to have been denied, granting the requestor the right to appeal, explained in section IV, below.

E. Denial Procedures. If a record custodian believes that a request should be denied, in whole or part, the custodian will immediately transmit the request, along with a memo setting out the possible basis for denying the request, to the Director for final agency determination in consultation with the Deputy Attorney General. If the Director's determination is to deny or partially deny the request, a written notice of the denial will be sent to the requestor within the three (3) day processing time limit, unless the requestor has been notified, in accordance with paragraph D., above that the agency will require ten (10) days to respond to the request. As required by the Public Records Law, the denial letter will:

1. State that the agency's Deputy Attorney General has reviewed the request or that the agency has had the opportunity to consult with legal counsel and declined to do so, and
2. Indicate the statutory authority for the denial, and
3. Clearly set out the requestor's right to appeal the denial or partial denial and the time periods for doing so, as explained in section IV, below.

F. Copy Fees and Labor Costs.

1. Requests for workers compensation records from the claimant or the employer. Under the provisions of I.C. § 72-515, a **claimant** or an **employer** (or their legal representatives) may obtain copies of all evidence taken at any proceeding in which they are a party **at no cost**. This includes copies of depositions submitted in evidence in their open or closed cases. All other requestors will be charged the fees and costs as set out below.

2. Requests for copies of depositions in open cases. Unless the Commission has the written permission of the court reporter who took the deposition to make unlimited copies without paying any additional consideration, the requestor will be required to pay, in addition to the cost making a copy of the

paper or microfiche record set out below, the fee, if any, charged by the court reporter for an additional copy of the requested deposition in all **open** cases. The requestor will be directed to the court reporter where they may obtain the copy themselves or, if the requestor prefers, the Commission will determine the cost and obtain a copy after the requestor has paid all costs in advance. Copies of depositions in Commission files of closed cases will be treated as any other official record for fee purposes.

3. Paper copy of paper records. No charge will be made to any requestor for the cost of copying agency paper public records for release under the Public Records Law unless more than 100 pages of paper records have been copied during any particular month. For requests over 100 pages in any month, the actual cost of copying each page of paper records over 100 pages may be made.

4. Paper copy of microfilm or microfiche records. No charge will be made to any requestor for the cost of copying agency microfilm or microfiche public records for release under the Public Records Law unless more than 50 pages of microfilm or microfiche records have been copied during any particular month. For requests over 50 pages in any month, the actual cost of copying each page of paper records over 50 pages may be made.

5. Computer media costs. The agency may also recover its direct costs for providing a duplicate of a computer tape, computer disk, microfilm or microfiche record (actual costs to be determined by the Information Technology Manager on a case-by-case basis at the time of the request).

6. Labor costs. The requestor will not be charged any labor or administrative costs associated with locating and providing a copy of a public record, unless:

- a. The request is for more than 100 pages of paper records, or
- b. The request requires that agency employees delete exempt information from the records requested, or
- c. The actual labor cost associated with locating and copying the records exceeds two (2) person hours.

7. Cost Log. In order to properly document any labor costs, the custodian of the records requested shall keep a log on which will be identified the name of the agency employee that actually located and copied or redacted (deleted exempt portions of) the requested records, as well as the total time spent in that activity. If any of the criteria for assessing labor costs, noted above, are met, the custodian shall, in addition to any billable copy costs, charge the requestor for the agency's documented labor costs incurred in responding to that request.

8. Waiver of costs. There is an exception to the general policy on collecting copy and labor costs contained in the law. Even when the agency's costs may be charged under the above guidelines, they will be waived when the requestor demonstrates either:

- a. The inability to pay, or
- b. That the public's interest or the public's understanding of the operations or activities of government or its records would suffer by the assessment or collection of any fee.

Any request to waive otherwise chargeable costs and fees under the above provisions of the law will be forwarded to the Director who will make the final determination regarding whether or not the requestor qualifies for a waiver under one of these criteria.

9. Mailing and postage costs. There is no requirement under the law that the agency must mail copies of documents provided to requestors. Custodians will, however, mail responses to public record requests upon request. Any requestor that may be charged for copy costs or labor under the policy outlined above may also be charged the cost of postage for mailing those copies. Postage fees will not be charged for mailing requests where no copy or labor costs are chargeable or are being waived under the above policy.

#### **IV. Proceedings to Enforce Right to Examine or Copy Records.**

A. Appeal to district court. A person who has had their request to examine or copy a public record denied has the right, within 180 days from the date of the mailing of that denial or partial denial (or, if the agency has failed to respond, within 180 days from the date 10 days after the request was received by the agency), to petition the district court of the county where the records, or some part thereof, are located to compel the public agency to make the information available for public inspection.

B. Retention of records pending appeal. Whenever a request to inspect or copy a public record has been denied or partially denied, the custodian of that record will retain all requested records or documents until the end of the 180 day appeal period or for the normal record retention period, whichever is longer. If an appeal is filed by a requestor, all agency records in question shall be retained by the custodian until after completion of the appeal litigation and their disposal is authorized by the Director after consulting with the agency Deputy Attorney General or as provided in the agency records retention policy, whichever is later.

## **APPENDIX A**

## REQUEST FOR WORKERS' COMPENSATION RECORDS



Under the provisions of Idaho Code § 9-340B(9)(a), the undersigned requests a copy of the workers' compensation records of the Idaho Industrial Commission identified below. Requestor agrees to pay all billable costs incurred in responding to this request under the Idaho Public Records Law.



Claimant's Full Name:\* \_\_\_\_\_

Claimant's Social Security Number:\* \_\_\_\_ - \_\_\_\_ - \_\_\_\_

Date(s) of injury:\* \_\_\_\_\_

I.C. Claim Number: \_\_\_\_ - \_\_\_\_ - \_\_\_\_

Employer: \_\_\_\_\_

Records Requested:\*

- ☐ Claims History Search for past 5-year period.
- ☐ Claims History Search for past \_\_\_\_ year period. (Computer Claims History Search not available for periods prior to 1973.)
- ☐ A copy of the above noted claim file(s).
- ☐ A copy of all claim files identified in the above noted Claims History Search.
- ☐ A copy of other workers' compensation records (Specify):
- ☐ Rehabilitation records    ☐ Adjudication records
- ☐ Other records (Describe): \_\_\_\_\_

The undersigned is, or is the legal representative of, (check all applicable boxes):\*

1. ☐ The claimant, or ☐ the employer, or ☐ the surety or ☐ the adjuster,
2. ☐ The claimant, or ☐ the employer, or ☐ the surety or ☐ the adjuster,  
that was **a party to the closed claim** file(s) requested above, or
3. ☐ The Industrial Special Indemnity Fund.

Full name of party:\* \_\_\_\_\_

Full name of legal representative:\* \_\_\_\_\_

Mailing Address for response:\* \_\_\_\_\_

Requestor's Phone Number:\* (\_\_\_\_) \_\_\_\_\_

Requestor's Signature:\*# \_\_\_\_\_

Date Signed:\*# \_\_\_\_\_

(\* = Completion mandatory)

(# = Must be signed personally by legal representative)

I.C. RESPONSE/NOTE AREA:

**SEND COMPLETED REQUEST TO: IDAHO INDUSTRIAL  
COMMISSION, ATTN: RECORDS MANAGEMENT, PO BOX  
83720, BOISE, ID 83720-0041**

## **APPENDIX B**

## EMPLOYER CERTIFICATE AND REQUEST FOR CLAIMS HISTORY

▲ ▲ ▲ ▲ ▲ ▲ ▲ ▲ ▲ ▲ ▲

In accordance with the provisions of Idaho Code § 9-340B(9)(b), the undersigned requests a copy of a computer claims history search of the last five (5) years of the workers' compensation records of the Idaho Industrial Commission for the worker identified below. Requestor agrees to pay all billable costs incurred in responding to this request under the Idaho Public Records Law.

The undersigned certifies that the requestor is the employer or prospective employer of the identified worker and that an offer of employment for the job identified below has already been extended to said worker. The undersigned certifies further that the requested information will only be used in accordance with the provisions of the Americans with Disabilities Act (42 U.S.C. 12112) or other statutory limitations. The undersigned acknowledges that this certificate is made under oath and subject to the provisions of Idaho Code § 18-5401, regarding false statements made under oath.

▲ ▲ ▲ ▲ ▲ ▲ ▲

Worker's Full Name:\*

Other Names Used:

Worker's Address:\*

Worker's Home Phone #: ( )

Worker's Social Security Number:\* - - - - -

Description of Job Offered to this Worker:\*

Start Date of Job Offered:\*

Requestor's (Employer's) Name:\*

Mailing Address:\*

**Certified By (Signature):\***

**Printed Name & Title :\***

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

I.C. RESPONSE/NOTE AREA:

SUBSCRIBED AND SWORN TO Before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC for

Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

(\* = Completion mandatory)

**SEND COMPLETED REQUEST TO: IDAHO INDUSTRIAL  
COMMISSION, ATTN: RECORDS MANAGEMENT, PO BOX  
83720, BOISE, ID 83720-0041**



## **APPENDIX C**

## **AUTHORIZATION TO RELEASE CLAIMS HISTORY**



In accordance with the provisions of Idaho Code § 9-340B(9)(c), the undersigned worker hereby authorizes the release of a copy of a computer claims history search of the last five (5) years of their workers' compensation claims from the records of the Idaho Industrial Commission to the employer, prospective employer or employer's agent identified below. The employer, prospective employer or agent, by their signature below, agrees to pay all billable costs incurred in responding to this request under the Idaho Public Records Law.



Worker's Full Name:\*

Other Names Used:

Worker's Address:\*

Worker's Home Phone #: ( ) \_\_\_\_\_

Worker's Social Security Number:\* \_ \_ \_ - \_ - \_ \_ \_

I.C. RESPONSE/NOTE AREA:

**Authorizing Individual Worker's Signature:**\*

**Date Signed:** \_\_\_\_\_

**Employer/Prospective Employer or Agent:**\*

Mailing Address:

**Employer's Representative or Agent's Signature:**\*

Printed Name & Title:

Representative's or Agent's Phone Number: ( ) \_\_\_\_\_

(\* = Completion mandatory)

**SEND COMPLETED REQUEST TO: IDAHO  
INDUSTRIAL COMMISSION, ATTN: RECORDS  
MANAGEMENT, PO BOX 83720, BOISE, ID  
83720-0041**

## **APPENDIX D**

# **CLAIMANT'S REQUEST FOR PERSONAL WORKERS' COMPENSATION RECORDS**



In accordance with the provisions of Idaho Code § 9-342, the undersigned requests a copy of their own workers' compensation claims from the records of the Idaho Industrial Commission, as described below. Requestor agrees to pay all billable costs incurred in responding to this request under the Idaho Public Records Law.



Requestor's Full Name:\* \_\_\_\_\_  
Other Names Used: \_\_\_\_\_  
Social Security Number:\* \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_  
Date(s) of Injury:\* \_\_\_\_\_  
I.C. Claim Number: \_\_\_\_\_ - \_\_\_\_\_  
Mailing Address:\* \_\_\_\_\_  
Daytime Contact Phone #:\* (\_\_\_\_) \_\_\_\_\_

## **Records Requested:\***

- ☐ Claims History Search for past 5-year period.
- ☐ Claims History Search for past \_\_\_\_ year period.  
(Computer Claims History Search not available for periods prior to 1973.)
- ☐ A copy of the above noted claim file(s).
- ☐ A copy of all claim files identified in the above noted Claims History Search.
- ☐ A copy of other workers' compensation records (Specify):

- ☐ Rehabilitation records      ☐ Adjudication records
- ☐ Other records (Describe): \_\_\_\_\_

- ☐ The undersigned requests that this information be provided directly to:  
(name) \_\_\_\_\_ at:  
(address) \_\_\_\_\_  
\_\_\_\_\_,  
acting as agent for requestor.

**Requesting Individual's Signature:\*** \_\_\_\_\_  
**Date Signed:\*** \_\_\_\_\_

(\* = Completion mandatory)

**SEND COMPLETED REQUEST TO: IDAHO  
INDUSTRIAL COMMISSION, ATTN: RECORDS  
MANAGEMENT, PO BOX 83720, BOISE, ID  
83720-0041**

## **APPENDIX E**

## REQUEST FOR RECORDS

### (OTHER THAN WORKER'S COMPENSATION RECORDS)

▲ ▲ ▲ ▲ ▲ ▲ ▲ ▲ ▲ ▲ ▲

In accordance with the provisions of the Idaho Public Records Law (Idaho Code § 9-337, *et seq.*), the undersigned hereby requests a copy of the records identified below. The requestor, by the signature below, agrees to pay all billable costs incurred in responding to this request under the Idaho Public Records Law.

▲ ▲ ▲ ▲ ▲ ▲ ▲

Requestor's Full Name:\*

Requestor's Mailing Address:\*

Requestor's Phone #:\*

( )

Records Requested:\*

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I.C. RESPONSE/NOTE AREA:

Requestor's Signature:\*

Date Signed:\*

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(\* = Completion mandatory)

**SEND COMPLETED REQUEST TO: IDAHO  
INDUSTRIAL COMMISSION, ATTN: RECORDS  
MANAGEMENT, PO BOX 83720, BOISE, ID  
83720-0041**

## **APPENDIX F**

## **FREQUENTLY ASKED QUESTIONS**

Q #1: “How do I know if the requestor is a ‘party’ to a workers’ compensation claim?”

ANS.: The only way you can determine that is to review the requested claim file and ascertain if the requestor was, in fact, a party to that particular claim. Parties usually, but not always, include the injured worker, the worker’s employer, and the employer’s surety or claims adjuster.

Q #2: “Is an attorney a party?”

ANS.: Not usually. They are only representing a party. In that capacity, an attorney is also entitled to obtain releasable records on behalf of his or her client that is a party to a claim. Sometimes an attorney can file a claim (such as for attorney fees) and become a party in his or her own right.

Q #3: “What workers’ compensation records can a party or their attorney obtain?”

ANS.: A party or their attorney in an open claim can obtain copies of all documents in the open claim file and copies of any closed claim records that are relevant to their open claim. This would include any closed claim filed by the injured worker and, possibly, closed claims for similar injuries filed by other workers against the party employer. In this latter case, care must be taken to protect the privacy of non-party claimants by redacting (deleting) all information that identifies the non-party claimant prior to release (see Guideline, Paragraph I.B., page 1, above). Parties to a closed claim may obtain copies of any documents in that closed claim file. A party to a closed claim may not obtain information from an open claim file unless they are also a party in that open claim. “Claim file” as used here includes any files, regardless of their purpose or designation, containing information relating to the “workers compensation” matters of a particular worker, including, but not limited to, rehabilitation files and adjudication case files.

Q #4: “For what purposes may parties obtain workers’ compensation records?”

ANS.: For any purpose. The law prohibits any inquiry regarding the purpose for the request for public records, other than to ensure that they will not be used for a mailing or telephone list.



Q #5: “How can I be sure the requestor is really who they say they are?”

ANS.: You may ask to see photo ID to verify that the individual is who they say they are. All requestors may be required to provide their name, mailing address and phone number, regardless of their status. Requests made in writing are presumed to be from the individual identified in the request. If there is evidence (not mere suspicion) that a written request is not being made by the individual named (if, for example, the claim file shows that the claimant requesting the file was killed in the industrial accident!), you can require the requestor to send you a copy of photo ID by mail or facsimile. If the requestor cannot provide the requested ID, the request may be denied in accordance with agency policy governing denials (see Guideline, Paragraph III.E., page 7).

Q #6: “How can someone that is not a party obtain a copy of a workers’ compensation record?”

ANS.: Unless the requestor is an employer or prospective employer subject to the ADA that can directly obtain claims records pertaining to their own employee or a prospective employee under the provisions of Paragraph III.C.2. of the Guideline (page 6), the claimant must give his or her written consent (see Guideline, Paragraphs III.C.3. and 4., page 6) or the requestor must have obtained a court order authorizing the release (see Guideline, Paragraph II.B.1.d., page 2).

Q #7: “Can I release statistical data about claims that doesn’t identify any particular person?”

ANS.: The law specifically allows release of information that does not identify any particular person or persons. “Person” also includes business entities like partnerships and corporations. In other words, you could issue a report that identified the number of workers’ compensation claim awards and the total dollar value of all claims, so long as it did not identify any of the parties to any claim.

Q #8: “Can I release information gathered by the agency in its administrative role over the workers’ compensation law?”

ANS.: All information that is gathered by the Commission regarding workers’ compensation compliance that is not part of an actual claim may be released to the public. For example, the name of an employer’s workers’ compensation surety or the names of employers who are in violation of the workers’ compensation insurance requirements of the law are public records that are not exempt from release to any member of the public under the Public Records Law in accordance with the Commission’s Guideline (see Guideline, Paragraph I.A., page 1).